S. 2562. A bill to reduce temporarily the duty on Baytron M; to the Committee on Finance.

S. 2563. A bill to reduce temporarily the duty on Baytron C–R; to the Committee on Finance.

## LEGISLATION TO SUSPEND THE DUTY ON CERTAIN CHEMICALS USED IN THE MANUFACTURING INDUSTRY

Mr. THURMOND. Mr. President, I rise today to introduce four bills which will suspend the duties imposed on certain chemicals that are important components in a wide array of applications. Currently, these chemicals are imported for use in the United States because there are no known American producers or readily available substitutes. Therefore, suspending the duties on these chemicals would not adversely affect domestic industries.

These bills would temporarily suspend the duty on the following:

Mesamoll (alkyl sulfonic acid ester of phenol);

Vulkalent E/C (N-phenyl-N-((trichloromethyl)thio)-benzenesulfonamide

with calcium carbonate and mineral oil);

Baytron M (3,4 ethylenedioxythiophene); and

Baytron C-R (iron(III) toluenesulfonate).

These chemicals are used in the manufacturing of a number of products including, but not limited to, solvents, PVC coated fabric, medical apparatus, rubber products for automobile hoses, circuit boards, and other electronic goods.

Mr. President, suspending the duty on these chemicals will benefit the consumer by stabilizing the costs of manufacturing the end-use products. Further, these duty suspensions will allow U.S. manufacturers to maintain or improve their ability to compete internationally. I hope the Senate will consider these measures expeditiously.

I ask unanimous consent that the text of these bills be printed in the RECORD.

There being no objection, the bills were ordered to be printed in the RECORD, as follows:

S. 2560

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. REDUCTION OF DUTY ON MESAMOLL.**

(a) IN GENERAL.—Subchapter II of chapter 99 of the Harmonized Tariff Schedule of the United States is amended by inserting in numerical sequence the following new subheading:

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| “ | 9902.38.14 | A certain Alkylsulfonic Acid Ester of Phenol (CAS No. 70775–94–9) (provided for in subheading 3812.20.10) | Free | No change | No change | On or before 12/31/2003 | ”. |

(b) EFFECTIVE DATE.—The amendment made by subsection (a) applies to goods entered, or withdrawn from warehouse for consumption, on or after the 15th day after the date of the enactment of this Act.

S. 2561

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. REDUCTION OF DUTY ON VULKALENT E/C.**

(a) IN GENERAL.—Subchapter II of chapter 99 of the Harmonized Tariff Schedule of the United States is amended by inserting in numerical sequence the following new subheading:

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| “ | 9902.38.30 | A mixture of N-Phenyl-N-((trichloromethyl)thio)-Benzenesulfonamide; calcium carbonate; and mineral oil (the foregoing provided for in subheading 3824.90.28) | Free | No change | No change | On or before 12/31/2003. | ”. |

(b) EFFECTIVE DATE.—The amendment made by subsection (a) applies to goods entered, or withdrawn from warehouse for consumption, on or after the 15th day after the date of the enactment of this Act.

S. 2562

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. REDUCTION OF DUTY ON BAYTRON M.**

(a) IN GENERAL.—Subchapter II of chapter 99 of the Harmonized Tariff Schedule of the United States is amended by inserting in numerical sequence the following new subheading:

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| “ | 9902.29.34 | A certain 3,4-ethylenedioxythiophene (CAS No. 126213–50–1) (provided for in subheading 2934.90.90) | Free | No change | No change | On or before 12/31/2003. | ”. |

(b) EFFECTIVE DATE.—The amendment made by subsection (a) applies to goods entered, or withdrawn from warehouse for consumption, on or after the 15th day after the date of the enactment of this Act.

S. 2563

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. REDUCTION OF DUTY ON BAYTRON C-R.**

(a) IN GENERAL.—Subchapter II of chapter 99 of the Harmonized Tariff Schedule of the United States is amended by inserting in numerical sequence the following new subheading:

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| “ | 9902.38.15 | A certain catalytic preparation based on Iron (III) toluenesulfonate (CAS No. 77214–82–5) (provided for in subheading 3815.90.50) | Free | No change | No change | On or before 12/31/2003. | ”. |

(b) EFFECTIVE DATE.—The amendment made by subsection (a) applies to goods entered, or withdrawn from warehouse for consumption, on or after the 15th day after the date of the enactment of this Act.

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By Ms. SNOWE:

S. 2564. A bill to provide tax incentives for the construction of seagoing cruise ships in United States shipyards, and to facilitate the development of a United States-flag, United States-built cruise industry, and for other purposes; to the Committee on Finance.

ALL AMERICAN CRUISE ACT OF 2000

Ms. SNOWE. Mr. President, I rise to introduce legislation designed to promote growth in the domestic cruise ship industry and at the same time enable U.S. shipyards to compete for cruise ship orders. The legislation would require that at least two U.S.-built ships be ordered for each foreign-built ship permitted to operate in the U.S. market, and provide tax incentives for U.S. cruise ship construction and operation.

Current law prohibits non-U.S. vessels from carrying passengers between U.S. ports. As such, today's domestic cruise market is very limited. The cruise industry consists predominantly of foreign vessels which must sail to and from foreign ports. The vast majority of cruise passengers are Americans, but most of the revenues now go to foreign destinations. That is because the high cost of building and operating U.S.-flag cruise ships and competition from modern, foreign-flag cruise ships have deterred growth in the domestic cruise ship trade.

By some estimates, a single port call by a cruise vessel generates between $300,000 and $500,000 in economic benefits. This is a very lucrative market, and I would like to see U.S. companies and American workers benefit from this untapped potential. However, domestic ship builders and cruise operations face a very difficult, up-hill battle against unfair competition from foreign cruise lines and foreign shipyards. Foreign cruise lines, for example, pay no corporate income tax. Nor are they held to the same demanding ship construction and operating standards imposed on U.S.-flag vessel operators. Foreign cruise lines are also free from the need to comply with many U.S. labor and environmental protection laws, and U.S. health, safety, and sanitation laws do not apply to the foreign ships.

The legislation I am introducing today is designed to level the playing field between the U.S. cruise industry and the international cruise industry. It requires that at least two U.S.-built ships be ordered for each foreign-built ship permitted to operate on a temporary basis in the U.S. market, and provide tax incentive for U.S. cruise ship construction and operation. For example, it provides that a shipyard will pay taxes on the construction or overhaul of a cruise ship of 20,000 gross tons or greater only after the delivery of the ship.

Under my bill, a U.S. company operating a cruise ship of 20,000 grt and greater may depreciate that vessel over a five-year period rather than the current 10-year depreciation period. The bill would also repeal the $2,500 business tax deduction limit for a convention on a cruise ship to provide a tax deduction limit equal to that provided to conventions held at shore-side hotels. The measure would authorize a 20-percent tax credit for fuel operating costs associated with environmentally clean gas turbine engines manufactured in the U.S., and also allows use of investment of Capital Construction Funds to include not only the non-contiguous trades, but also the domestic point-to-point trades and ''cruise to nowhere.''

Finally, the bill provides that a foreign-built ship may be brought into the U.S. trades only after the owner or buyer of such vessel has entered into a binding contract for the construction of at least two cruise ships of equal or greater size in the U.S. The interim foreign-built ship must be documented in the U.S. The contract must require that the first ship constructed in the U.S. be delivered no later than four years from the date of entering the binding contract with the delivery of a second ship within five years, and that the foreign-built ship must exit the U.S. trade within 12 months of the delivery of the last ship, provided there is no longer than a 24-month elapse between delivery of second and subsequent ships, should the contract provide for construction of more than two ships.

Mr. President. I truly believe that this legislation would jumpstart the domestic cruise trade, benefit U.S. workers and companies, and promote economic growth in our ports. I strongly urge my colleagues to join me in a strong show of support for this legislation.

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By Mr. FRIST (for himself and Mr. MCCAIN):

S. 2566. A bill to amend the Federal Food, Drug, and Cosmetic Act to grant the Secretary of Health and Human Services the authority to regulate tobacco products, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

NATIONAL YOUTH SMOKING REDUCTION ACT

Mr. FRIST. Mr. President, I rise today to introduce the National Youth Smoking Reduction Act, along with my colleague, Senator MCCAIN. The purpose of this bill is to diminish the number of children who start to smoke or use other tobacco products, while at the same time trying to reduce the risk such products pose to adults who make the ill-advised—but legal—choice to use these products.

Mr. President, each day, more than 3,000 kids become regular smokers. That's about one million per year. Currently more than 4 million children 12 to 17 years old smoke. Sadly, more than 5 million children alive today will die prematurely from smoking-related illnesses, unless current trends are reversed.

Adults almost always start smoking as children. According to a 1994 Surgeon General report, nearly 90 percent of adults who smoke took his or her first puff at or before the age of 18. Moreover, youth smoking is on the rise! The Centers for Disease Control and Prevention have determined that smoking rates for students in grades 9 through 12 increased from 27.5 percent in 1991 to 36.4 percent in 1997. In my own state of Tennessee, 38 percent of all high school students smoke compared to just 26 percent of Tennessee adults.

Mr. President, we should all be alarmed by these statistics. Before my election to the United States Senate, I was a heart and lung transplant surgeon. I have held hundreds and hundreds of lungs in my hands that were ravaged by years of smoking. I've performed hundreds of coronary artery bypass heart operations to repair damage accelerated by smoking. When you've seen the damage that cigarettes can cause to the human body, it is a powerful motive to find a way to try to prevent children from ever starting the habit. After all, as the statistics suggest, if you keep a child from smoking, he'll probably never start as an adult.

Many factors account for a child's decision to smoke. One concerns the easy access of tobacco products to our nation's youth. For too long, cigarettes have been readily available to those who are too young to purchase them legally, whether through vending machines or by pilfering them from self-service displays.

Another heavily-researched factor is the role that advertising has in stimulating children to smoke. According to a 1995 study published in the Journal of the National Cancer Institute, teens are more likely to be influenced to smoke by cigarette advertising than they are by peer pressure. In 1994 the CDC determined that 86 percent of children who smoke prefer Marlboro, Camel and Newport—the three most heavily advertised brands—compared to only about one-third of adult smokers. When advertising for the ''Joe Camel'' campaign jumped from $27 million to $43 million, between 1989 and 1993, Camel's share among youth increased by more than 50 percent, while its adult market share did not change at all.

There have been efforts made during the last decade to curb and eliminate children smoking. In 1996, the Food and Drug Administration promulgated a rule which would have reduced youth access to tobacco by banning most cigarette vending machines and requiring that retailers verify the age of all over the counter sales. The rule would also address advertising to children by restricting advertising within 1,000 feet of schools and playgrounds, restricting outdoor ads and ads in publication with a significant teen readership to black and white text only.

The rule was controversial, particularly some of the advertising restrictions. It was made even more controversial by the fact that many in Congress did not believe that FDA had ever been given the authority to regulate tobacco.

During the 105th Congress, Senator MCCAIN introduced S. 1415, the tobacco settlement bill, which was a comprehensive response to the landmark tobacco settlement of 1997. As part of that bill, I drafted provisions which set up a framework for the FDA to regulate tobacco. The tobacco settlement bill did not pass the Senate, which killed my effort during the 105th Congress to have FDA regulate tobacco in an attempt to keep the product away from children.

Thus, Congress has never delegated to the FDA the authority to regulate tobacco. On March 21, 2000, the U.S. Supreme Court ruled that FDA lacked any authority to regulate tobacco products. It was obvious to the Court that Congress never intended for the FDA to treat tobacco products as drugs subject to regulation under the Federal Food, Drug and Cosmetic Act.

The National Youth Smoking Reduction Act, which we introduce today, would for the first time give the FDA authority to regulate tobacco.

This authority would not flow from treating nicotine as a drug and tobacco products as drug delivery devices. That's what the FDA has already tried to do, by trying to force tobacco products under Chapter 5 of the existing Act. To me, this is like taking a square peg and trying to put it in a round hole; it just doesn't fit. Chapter 5 calls on the Secretary to determine whether the regulatory actions taken will provide reasonable assurance of the ''safety and effectiveness'' of the drug or the device. Well, clearly, tobacco is neither safe nor effective, as those terms are understood in the Act. We know that tobacco kills. That has clearly been demonstrated over the last 35 years. You can talk about the effectiveness of a pacemaker or a heart valve or an artificial heart; you can talk about those devices as being safe and effective. You really cannot apply that standard to tobacco. Therefore, instead of taking tobacco and ramming it through the drug and device provisions, I felt it was important to look at the unique nature of tobacco, and regulate it under a new chapter, which we designate as Chapter 9. This gives FDA the flexibility to create a new standard that was appropriate for tobacco products.

Chapter 9 requires manufacturers to submit to the FDA information about the ingredients, components and substances in their products. It empowers the FDA to set performance standards for tobacco products, by which FDA can try to reduce the risk posed by these products. It gives FDA the power to regulate the sale, distribution, access to, and advertising of tobacco products to try to prevent children from smoking. It also gives the FDA the power to revise and improve the warning labels contained on tobacco product packages and advertising. Last, it gives FDA the power to encourage tobacco manufacturers—who probably know more about the products than even FDA's scientists—to develop and market ''reduced risk'' products for adults who are regular users of tobacco.

In short, our bill represents a powerful, initial grant of authority to the FDA to regulate tobacco.

We think the bill, as a whole, strikes a fair balance between the need to promote the public health and the recognition that adults may legally choose to smoke. I very strongly believe that, should Congress act to give FDA authority to regulate tobacco products, this legislation will be the template.

Six years ago, I was saving lives as a heart and lung surgeon. I saw the ravages of tobacco in the operating room. The people of Tennessee elected me to use common sense to advance the public good. I submit that crafting a comprehensive approach to keep children from smoking is a chance for the Senate to save lives through the exercise of common sense.

Mr. MCCAIN. Mr. President, I am pleased to co-sponsor this important legislation aimed at reducing youth smoking. This legislation addresses the void in federal regulatory authority over tobacco left by the recent Supreme Court ruling that FDA has no current power to regulate tobacco products.

Dr. FRIST provided excellent guidance and leadership on FDA authority in 1998. In this legislation he is continuing that role by proposing legislation which I believe can gain support of enough of our colleagues to actually make this the law. Right now FDA has no authority whatsoever. While I supported the even more stringent measures proposed in 1998, I concur with Senator FRIST that our chief responsibility this year is to pass legislation which will actually result in reductions in the number of kids smoking. We should pass this legislation and see results, not simply talk for several more years about how much more we would like to do.

The statistics on youth smoking are clear and alarming: 3000 kids start smoking every day; 1000 of them will die early from smoking related disease; and one of three adolescents is using tobacco by age 18.

We're not talking about kids who sneak a cigarette out of their mother's purse. According to a Surgeon General's report 71 percent of youth smokers use tobacco daily, but 90 percent of lifetime smokers take up the habit before the age of 18—the legal age to buy tobacco products in every state in the union—so if we can limit the number of kids smoking, we will eventually decrease the number of adults smoking.

Specifically, what the legislation will do is:

1. FDA will oversee ingredients in tobacco products to ensure that they are adulterated with ''putrid'' or ''poisonous substances,'' and may regulate the manufacturing process to require the sanitary conditions one would normally expect in dealing with agricultural products.

2. It includes the very stringent and specific warning labeling requirements from the 1998 legislation. FDA will have the authority to revise and enforce labeling requirements, and to ensure that tobacco products are not misbranded or misrepresented to the public.

3. FDA will serve as the clearinghouse for information about tobacco products, the ingredients used by manufacturers, and will approve new products and formulas to ensure that they protect public health.

4. FDA will have the authority to establish advertising and access limitations designed to ensure that kids are not the target of marketing by tobacco companies, and to prevent kids from easily shoplifting or buying cigarettes.

5. It provides a mechanism for lower risk tobacco products to be tested, reviewed and approved.

6. It allows FDA to regulate tobacco products and nicotine to decrease the harm caused by them as much as feasible.

What the legislation does not do is permit FDA to ban tobacco products directly, or indirectly. That authority remains with Congress. There are an estimated 40–50 million smokers in this country, and it is neither practical nor in the public interest to vest that authority with a federal agency which is unaccountable to the public at large. We do not gain by driving current smokers to black markets. It is better to regulate tobacco products to prevent them from becoming worse and to focus on decreasing the number of kids who take up smoking or using chewing tobacco.

The legislation also does not raise prices—it does not raise taxes. No new government programs or agencies are created. No liability issues are addressed. This is simple and straightforward legislation to give the FDA authority to regulate tobacco products and to promulgate regulations to prevent advertising, marketing and access for kids.

The legislation does not permit a broad ban or control over advertising.

Instead, it vests authority with FDA to regulate advertising aimed at kids. This limitation allows FDA sufficient authority to address Joe Camel type advertising, while providing the best opportunity for success against constitutional challenges.

While I strongly advocate against kids smoking, I recognize that it is the right of an adult to make a stupid choice—to smoke—knowing of the consequences. This legislation protects that right. It provides a delicate balance between protecting a person from himself, and letting each individual make individual choices, and suffer the consequences of those choices.

This legislation will draw attacks from both sides—from those who think the bill is too stringent, and from those who think the legislation does not go far enough. I say to my friends on both sides, this is a reasonable and practical solution to a serious problem. I urge an end to the posturing and a dedication to making sure that we do not leave this session without providing FDA with some authority over tobacco products. I pledge to both sides that I will work with them to refine the language, to address their legitimate concerns. But, we will have gained nothing if we allow this to become the political football that it became two years ago.

Make no mistake, this is not perfect legislation. I would like to do more. But I think it is more important to move forward with this very good proposal than to wait for some distant time, if ever, when we can pass a perfect bill.

This legislation is a major step in the right direction. I think we can get enough support to pass it. I support its early consideration and action.

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By Mrs. BOXER.

S. 2567. A bill to provide Outer Continental Shelf Impact Assistance to State and local governments, to amend the Land and Water Conservation Fund Act of 1965, the Urban Park and Recreation Recovery Act of 1978, and the Federal Aid in Wildlife Restoration Act (commonly referred to as the Pittman-Robertson Act) to establish a fund to meet the outdoor conservation and recreation needs of the American people, and for other purposes; read the first time.

CONSERVATION AND REINVESTMENT ACT

Mrs. BOXER. Mr. President, earlier today, I introduced in the Senate a bill that passed the House of Representatives on Thursday, May 11—the Conservation and Reinvestment Act of 2000. I introduced the bill and asked that it be put on the Senate calendar for one simple reason. I believe that the fastest way to pass legislation to protect our national lands legacy is to take up where the House left off last week.

I know that the Energy and Natural Resources Committee has been trying for many months to get a lands legacy bill, and I commend the efforts of Senator BINGAMAN, Senator LANDRIEU and others. But I am also aware of the great differences of opinion on the Committee. I personally support the Bingaman bill, which is similar to legislation I introduced last year, the Resources 2000 Act. Some Senators support the Landrieu bill. Others oppose both approaches.

Thus, it may not be possible to get a strong bill out of the Energy Committee this year. And, Mr. President, we are running out of time. There are probable fewer than 60 working days left in the 106th Congress. So that is why I have asked that the House bill be placed on the Senate calendar, so that at any time the Majority Leader can take it up and place it before the Senate.

The House bill isn't perfect. I would like to see further changes. But it would be a good start for the Senate. We must not let this session of Congress end without passing this critical legislation to protect our natural heritage.

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By Mr. KENNEDY (for himself, Mr. LAUTENBERG, Mr. DURBIN, Mr. KERRY, and Mr. WELLSTONE):

S. 2568. A bill to protect the public health by providing the Food and Drug Administration with certain authority to regulate tobacco products; to the Committee on Health, Education, Labor, and Pensions.

YOUTH SMOKING PREVENTION AND PUBLIC HEALTH PROTECTION ACT

Mr. KENNEDY. Mr. President, today, I am introducing legislation to give the Food and Drug Administration board authority to regulate tobacco products for protection of the public health. With the recent 5 to 4 decision by the Supreme Court rejecting FDA's claim that it had authority to regulate tobacco products under current law, it is now essential for Congress to act. We cannot in good conscience allow the federal agency most responsible for protecting the public health to remain powerless to deal with the enormous risk of tobacco, the most deadly of all consumer products.

The provisions in this bill are identical to those in the bipartisan compromise reached during Senate consideration of comprehensive tobacco control legislation in 1998. Fifty eight Senators supported it at that time. That legislation was never enacted because of disputes over tobacco taxation and litigation, not over FDA authority.

This FDA provision is a fair and balanced approach to FDA regulation. It creates a new section in FDA jurisdiction for the regulation of tobacco products, with standards that allow for consideration of the unique issues raised by tobacco use. It is sensitive to the concerns of tobacco farmers, small businesses, and nicotine-dependent smokers. But, it clearly gives FDA the authority it needs in order to prevent youth smoking and to reduce addiction to this highly lethal product.

I had hoped to be introducing this bill with the same bipartisan support we had for this FDA provision in 1998. Unfortunately, we have not been able to reach agreement. I believe the changes in the 1998 language now being proposed by Republicans will undermine the FDA's ability to deal effectively with the enormous health risks posed by smoking. This concern is shared by a number of independent public health experts who have reviewed the proposed Republican changes and by the FDA officials who would be responsible for administering the law. The bipartisan compromise agreed to in 1998 is still the best opportunity for Senators to come together and grant FDA the regulatory authority it needs to substantially reduce the number of children who start smoking and to help addicted smokers quit. Nothing less will do the job.

The stakes are vast. Three thousand children begin smiling every day. A thousand of them will die prematurely from tobacco-induced diseases. Smoking is the number one preventable cause of death in the nation today. Cigarettes kill well over four hundred thousand Americans each year. That is more lives lost than from automobile accidents, alcohol abuse, illegal drugs, AIDS, murder, suicide, and fires combined. Our response to a public health problem of this magnitude must consist of more than half-way measures.

We must deal firmly with tobacco company marketing practices that target children and mislead the public. The Food and Drug Administration needs broad authority to regulate the sale, distribution, and advertising of cigarettes and smokeless tobacco.

The tobacco industry currently spends five billion dollars a year to promote its products. Much of that money is spent in ways designed to tempt children to start smoking, before they are mature enough to appreciate the enormity of the health risk. The industry knows that more than 90% of smokers begin as children and are addicted by the time they reach adulthood.

Documents obtained from tobacco companies prove, in the companies' own words, the magnitude of the industry's efforts to trap children into dependency on their deadly product. Recent studies by the Institute of medicine and the Centers for Disease Control show the substantial role of industry advertising in decisions by young people to use tobacco products. If we are serious about reducing youth smoking, FDA must have the power to prevent industry advertising designed to appeal to children wherever it will be seen by children. This legislation will give FDA the ability to stop tobacco advertising which glamorizes smoking from appearing in publications likely to be read by significant numbers of children.

FDA authority must also extend to the sale of tobacco products. Nearly every state makes it illegal to sell cigarettes to children under 18, but surveys show that those laws are rarely enforced and frequently violated. FDA must have the power to limit the sale of cigarettes to face-to-face transactions in which the age of the purchaser can be verified by identification. This means an end to self-service displays and vending machine sales. There must also be serious enforcement efforts with real penalties for those caught selling tobacco products to children. This is the only way to ensure that children under 18 are not able to buy cigarettes.

The FDA conducted the longest rulemaking proceeding in its history, studying which regulations would most effectively reduce the number of children who smoke. Seven hundred thousand public comments were received in the course of that rulemaking. At the conclusion of its proceeding, the Agency promulgated rules on the manner in which cigarettes are advertised and sold. Due to litigation, most of those regulations were never implemented. If we are serious about curbing youth smoking as much as possible, as soon as possible; it makes no sense to require FDA to reinvent the wheel by conducting a new multi-year rulemaking process on the same issues. This legislation will give the youth access and advertising restrictions already developed by FDA the immediate force of law, as if they had been issued under the new statute.

The legislation also provides for stronger warnings on all cigarette and smokeless tobacco packages, and in all print advertisements. These warnings will be more explicit in their description of the medical problems which can result from tobacco use. The FDA is given the authority to change the text of these warning labels periodically, to keep their impact strong.

Nicotine in cigarettes is highly addictive. Medical experts say that it is as addictive as heroin or cocaine. Yet for decades, tobacco companies have vehemently denied the addictiveness of their products. No one can forget the parade of tobacco executives who testified under oath before Congress as recently as 1994 that smoking cigarettes is not addictive. Overwhelming evidence in industry documents obtained through the discovery process proves that the companies not only knew of this addictiveness for decades, but actually relied on it as the basis for their marketing strategy. As we now know, cigarette manufacturers chemically manipulated the nicotine in their products to make it even more addictive.

The tobacco industry has a long, dishonorable history of providing misleading information about the health consequences of smoking. These companies have repeatedly sought to characterize their products as far less hazardous than they are. They made minor innovations in product design seem far more significant for the health of the user than they actually were. It is essential that FDA have clear and unambiguous authority to prevent such misrepresentations in the future. The largest disinformation campaign in the history of the corporate world must end.

Given the addictiveness of tobacco products, it is essential that the FDA regulate them for the protection of the public health. Over forty million Americans are currently addicted to cigarettes. No responsible public health official believes that cigarettes should be banned. A ban would leave forty million people without a way to satisfy their drug dependency. FDA should be able to take the necessary steps to help addicted smokers overcome their addiction, and to make the product less toxic for smokers who are unable or unwilling to stop. To do so, FDA must have the authority to reduce or remove hazardous ingredients from cigarettes, to the extent that it becomes scientifically feasible. The inherent risk in smoking should not be unnecessarily compounded.

Recent statements by several tobacco companies make clear that they plan to develop what they characterize as ''reduced risk'' cigarettes. This legislation will require manufacturers to submit such ''reduced risk'' products to the FDA for analysis before they can be marketed. No health-related claims will be permitted until they have been verified to the FDA's satisfaction. These safeguards are essential to prevent deceptive industry marketing campaigns, which could lull the public into a false sense of health safety.

Smoking is the number one preventable cause of death in America. Congress must vest FDA not only with the responsibility for regulating tobacco products, but with full authority to do the job effectively.

This legislation will give the FDA the legal authority it needs to reduce youth smoking by preventing tobacco advertising which targets children—to prevent the sale of tobacco products to minors—to help smokers overcome their addiction—to make tobacco products less toxic for those who continue to use them—and to prevent the tobacco industry from misleading the public about the dangers of smoking.

The 1998 compromise we reached in the Senate is still the right answer. We cannot allow the tobacco industry to stop us from doing what we know is right for America's children. I intend to do all I can to see that Congress enacts this legislation this year. The public health demands it.

By Mr. BOND (for himself, Mr. KERRY, Mr. CAMPBELL, Mr. MURKOWSKI, Mr. STEVENS, Mr. DASCHLE, and Mr. BAUCUS):

S. 2569. A bill to ensure and enhance participation in the HUBZone program by small business concerns in Native America, to expand eligibility for certain small businesses on a trial basis, and for other purposes; to the Committee on Small Business.

HUBZONES IN NATIVE AMERICA ACT OF 2000

• Mr. BOND. Mr. President, the bill I am introducing today with Senators KERRY, CAMPBELL, MURKOWSKI, STEVENS, DASCHLE, and BAUCUS will expand economic opportunity in some of the most stubborn areas of poverty and unemployment in the entire country. It will do so by expanding the HUBZone program to ensure that Indian Tribal enterprises and Alaska Native Corporations are eligible to participate.

The HUBZone program, enacted in 1997, directs a portion of Federal contracting dollars into areas of the country that have been out of the economic mainstream for far too long. HUBZone areas, which include, qualified census tracts, poor rural counties, and Indian reservations, often are relatively out-of-the-way places that the stream of commerce passes by. They tend to be low-traffic areas that do not have a reliable customer base to support business development. As a result, business has been reluctant to move into these areas. It simply has not been profitable, without a customer base to keep them operating.

The HUBZone Act seeks to overcome this problem by making it possible for the Federal government to become a customer for small businesses that locate in HUBZones. While a small business works to establish its regular customer base, a Federal contract can help it stabilize its revenues and remain profitable. This gives small business a chance to get a foothold, and provides jobs to these areas. New business and new jobs mean new life and new hope for these communities.

The HUBZone Act seeks to restart the economic engine in these communities and keep it running. Small business is the carburetor that makes that engine run smoothly. If a community seeks to attract a large business, often with expensive tax concessions and promises of public works, that community can find itself back where it started if that large business becomes unprofitable and closes its plant. However, if a community attracts a diversified base of small businesses its overall economic development does not stop just because one or two of those businesses close. That is why small business must be a central part of any economic development strategy.

Unfortunately, when we wrote the HUBZone Act three years ago, we accidentally created a technical glitch that excludes Indian Tribal enterprises and

Alaska Native Corporations. These businesses must play a central role in improving life in rural Alaska and on Indian reservations. That is why we are here to propose a solution to this problem.

In the HUBZone Act, we specified that participating small businesses must be 100 percent owned and controlled by U.S. citizens. However, since citizens are ''born or naturalized'' under the Fourteenth Amendment, ownership by citizens implies ownership by individual flesh-and-blood human beings. Corporate owners and Tribal government owners are not ''born or naturalized'' in the usual meanings of those terms. Thus, the Small Business Administration found that it had no authority to certify small businesses owned wholly or partly by Alaska Native Corporations and Tribal governments.

Although the legal logic of that view seems sound, the outcome is not. It certainly is not what we intended. On many reservations, particularly the desolate, isolated ones in western State, the only investment resources available are the Tribal governments. Excluding those governments from investing in their own reservations means, in practical terms, excluding those reservations from the HUBZone program entirely. Similarly, Alaska Native Corporations have the corporate resources that are necessary to make real investments in rural Alaska, to provide jobs to Alaska Natives who currently have no hope of getting them.

That is why we are here to propose a legislative fix. In putting together this bill, we have sought to follow three broad principles.

First, no firm should be made eligible solely by virtue of who they are. We should not, for example, make all Alaska Native Corporations eligible solely because they are Alaska Native Corporations. Instead, Alaska Native Corporations and Indian Tribal enterprises should be eligible only if they agree to advance the goals of the HUBZone program: job creation and economic development in the areas that need it most.

Second, our legislation should seek to conform to existing Native American policy and not allow the HUBZone program to be used as a back door to change that policy. Some folks would like to change Alaska Native policy so that Alaska Natives exercise governmental jurisdiction over their lands, just like Tribes in the Lower 48 do on their reservations and trust lands. However, the Alaska Native Claims Settlement Act (ANCSA) of 1971 deliberately avoided that approach, and our legislation here simply recognizes existing practice in ANCSA.

The third principle underlying this bill is that Alaska Natives and Indian Tribes should participate on more-or-less equal grounds. It is impossible to have exact equivalence because the Federal relationship with Alaska Natives is not equal to the relationship with Indian Tribes, and also because Alaska is a very different State from the Lower 48. However, ANCSA provided that Alaska Natives should be eligible to participate in Federal Indian programs ''on the same basis as other Native Americans.''

Mr. President, with these principles in mind, we have finally come to the end of a long negotiation on these issues. This bill represents the outcome of that discussion, and it is a long step forward. I have a section-by-section discussion of the bill, and I ask unanimous consent that it be printed in the RECORD.●

There being no objection, the material was ordered to be printed in the RECORD, as follows:

SECTION-BY-SECTION ANALYSIS

*Section 1.* The bill amends the definition of ''HUBZone small business concern'' to include small businesses owned by one or more U.S. citizens (current law), Alaska Native Corporations and their subsidiaries, joint ventures, and partnerships as defined under ANCSA, and Tribal enterprises. Tribal enterprises refers to those wholly owned by one or more Tribal governments, and to those partly owned by Tribal governments if all other owners are small businesses or U.S. citizens. Some Tribal governments have also created holding companies to do their business for them, so they can waive sovereign immunity against those companies without waiving it against the Tribe itself. Small businesses owned by these holding companies would also be eligible.

*Section 2.* This amends the definition of ''qualified HUBZone small business concern'' to indicate what each of the ''HUBZone small business concerns'' must do in order to advance the goals of the program and be qualified. Small businesses in general must have a principal office in a HUBZone, and 35% of their employees must reside in a HUBZone (current law). This is also the underlying policy that would apply to Alaska Native Corporations if the pilot program described below were to become inactive; however, it is not likely that Alaska Native Corporations would be able to participate in the HUBZone program on this basis, for the reasons in the discussion of the pilot program, below. Having this as the fallback position in case the pilot program is suspended, however, keeps Alaska Native Corporations and small businesses in Alaska on the same footing. In this way, a uniform standard will be in force in Alaska for all program participants, either under the pilot program or under this section. This prevents unnecessary confusion and complexity.

Tribal enterprises would be required to have 35% of their employees performing a HUBZone contract either reside on an Indian reservation or on any HUBZone adjoining a reservation. This allows Tribal enterprises to use a place-of-performance standard similar to Alaska Native Corporations in the pilot program, below. However, it is slightly more restrictive than the rule that applies to small businesses in general, whose employees may come from any HUBZone to meet the 35% threshold. Since Tribal enterprises are government-owned entities (owned wholly or partly by Tribal governments), this provision limits their scope to the reservations governed by their respective owners.

The language about HUBZones ''adjoining'' a reservation is also comparable to existing language in the Indian Education Act that refers to activities ''on or near'' a reservation, so the idea has a precedent in other Indian policy areas.

In each of these cases, a firm added to the definition of ''HUBZone small business concerns'' has a corresponding obligation imposed on it to be ''qualified.'' They have to do something in a HUBZone to participate.

The final component of this section is the ''HUBZone Pilot Program for Sparsely Populated Areas.'' This attempts to address concerns that small businesses in Alaska, as well as Alaska Native Corporations, are likely to face insurmountable practical problems that prevent their participation in the HUBZone program even if they are eligible on paper. Most of the useful HUBZones are in rural areas (Anchorage has just a handful of qualified census tracts, and two of those tracts are military installations), but rural areas tend not to have large residential populations and have little infrastructure to support contract performance. Thus, Alaska Native Corporations tend to be headquartered in Anchorage, and 50% of the Native population lives in Anchorage, where HUBZones are few. This makes it unlikely that an Alaska Native Corporation would be able to meet the general HUBZone program's criteria of having a principal office plus 35% of their employees in a HUBZone.

Other small businesses in Alaska are likely to confront these same problems of population patterns and lack of infrastructure that affect the Alaska Natives—and unlike the Alaska Natives, regular small businesses will have fewer corporate resources to call upon to overcome those problems. It also makes sense administratively for all of Alaska to have the same set of basic rules for the program at any given time. Thus, the bill includes a three-year pilot program providing that HUBZone participants must have their principal office in a HUBZone in Alaska or 35% of their employees must reside in a HUBZone in Alaska or in an Alaska Native village in Alaska or 35% of the employees working on a contract awarded through the HUBZone program must do their work in a HUBZone in Alaska. This creates a rule unique to Alaska. HUBZone participants in Alaska would not need to meet all three criteria, just one of them.

Under the pilot language, firms could relocate their principal office to comply, or else they could hire 35% of their employees from HUBZones. If neither of those is do-able, they would have a third option, of having 35% of their employees working a specific HUBZone contract do so in an Alaska HUBZone.

However, since this does represent a relaxing of the current HUBZone criteria, it is important to be on guard against the possibility of relaxing the rules too much. Thus, the pilot program has a cap. If more than 2% of the nation's small business contract dollars are awarded to Alaska in any fiscal year, the pilot would shut down for the next fiscal year. Alaska Native Corporations and Alaska small businesses would then fall back on the underlying, current-law criteria of having a principal office in a HUBZone and 35% of their employees residing in a HUBZone.

*Section 3.* The definitions of Alaska Native Corporation and Alaska Native Village are the same as in ANCSA. The definition of ''Indian reservation'' refers generally to the definition of ''Indian country'' at 18 U.S.C. 1151, with two exceptions. It excludes lands taken into trust in any State where a Tribe did not exercise governmental jurisdiction on the date of enactment (unless the Tribe is recognized after the date of enactment). It also excludes land acquisitions that are not within the external boundaries of a reservation or former reservation or are noncontiguous to trust or restricted lands as of the date of enactment. Since reservation and trust areas are deemed HUBZones without any explicit test of economic need, a Tribe could otherwise purchase a plot of land in a prosperous area, have it placed into trust status, and have it deemed a HUBZone. Using scarce economic development resources like the HUBZone program, on areas that are already developing without such assistance, is not the highest and best use of those limited resources. However, this definition would still allow Tribes to continue current practices of trying to acquire lots, within their reservations, to eliminate the ''checkerboard'' pattern of reservations that have plots within them not owned by the Tribe; it also allows Tribes to expand existing trust areas.

Finally, the definition of ''Indian reservation'' provides a special rule for Oklahoma, which was all reservation at one time. If all of Oklahoma were to be deemed a HUBZone, the program benefits would flow to businesses in their current locations, without requiring job creation in distressed areas of Oklahoma. This would be corporate welfare, not economic development. To avoid this problem, the definition focuses the HUBZone program on Oklahoma lands currently in trust or eligible for trust status under existing regulation.●

● Mr. KERRY. Mr. President, I want to express my support for the HUBZones in Native America Act of 2000. This bill is designed to clarify eligibility requirements and enhance participation by Native American-owned small firms seeking certification in the Small Business Administration's Historically Underutilized Business Zone (HUBZone) government contracting program. The bill also sets up a temporary pilot program for Alaska Native Corporations under the HUBZone program.

As ranking member of the Committee on Small Business, I was a cosponsor to the HUBZone legislation when it was enacted into law as part of the Small Business Reauthorization Act of 1997. The original bill language, because of some peculiarities in Native American and Alaska Native law, inadvertently exempted some Native American-owned firms located in economically distressed areas from participating in the HUBZone program. This bill is designed to make those firms eligible to participate.

The HUBZone program, Mr. President, is designed to help qualified small businesses located in economically distressed areas—inner cities, rural areas, and Native American tribal lands—secure contracting opportunities with the Federal government. The program is also designed to create jobs in these areas by requiring that firms hire 35% of their workforce from economically distressed areas.

According to the SBA, there are currently 1171 small businesses that are eligible to participate in the HUBZone program, and 114 of these are Native American-owned, 11 of which are located in the state of Alaska. This bill should provide the vehicle for more Native American-owned firms to become eligible.

Mr. President, Native Americans are one of the groups that the SBA presumes to be socially and economically disadvantaged for purposes of their Section 8(a) and Small Disadvantaged Business contracting programs. Unfortunately, Native American tribal areas have not been able to share in the remarkable economic growth that our country has enjoyed for the last few years. It is my hope that this bill, with its technical corrections to the HUBZone program, will in some part, provide greater economic opportunities in these areas that continue to suffer high levels of unemployment and desperately need this help.●

● Mr. CAMPBELL. Mr. President, I am pleased today to join my fellow chairman Senator BOND in introducing the HUBZones in Native America Act of 2000.

The act is designed to make sure that federal procurement dollars are targeted to the areas that are most in need of an economic boost. These areas are called ''historically underutilized business zones'' and under the Act, Indian reservations are defined as ''historically underutilized business zones''.

Tribal economies continue to be among the most depressed and economically stagnant in the country. Though some well-situated tribes are benefiting from gambling, most tribes and Indian people live in Third World conditions.

In the 106th Congress, the emphasis of the Committee on Indian Affairs has been that of Indian economic development. The ultimate goal for Native economies is self-sufficiency. Programs, such as this, bridge the gap between Native economies and private enterprise.

On May 10, 1999, the Committee on Small Business and the Committee on Indian Affairs held a joint hearing on the implementation of the HUBZones Act of 1997 and its impact on Indian communities.

During that hearing three main issues were aired that are remedied by the amendments we introduce today:

Eligibility of Indian Lands in Oklahoma; Eligibility of Indian Lands in Alaska; and Eligibility of Tribally-owned enterprises.

The original intent of the HUBZone program was to re-target existing federal contracting dollars into America's distressed communities, including Alaska Native and Indian communities. The changes reflected in the HUBZones in Native America Act of 2000 build on the original intent of the Act, and make further steps to ensure that Alaska Native and Indian communities fully participate in this competitive program. I look forward to perfecting the obstacles that remain.

I am hopeful that the legislation introduced today will encourage long-term economic growth in Native communities by expanding business opportunities and job creation activities.●

Mr. STEVENS. Mr. President, today I join Senators BOND, KERRY, CAMPBELL, MURKOWSKI, DASCHLE, and BAUCUS, in introducing this bill. I want to focus on a few specific portions of this bill that would be beneficial to Alaska. this bill contains a provision to create a pilot program for small businesses in qualified areas of Alaska. The pilot program contained in this bill would alter the requirements for Alaska small Businesses to quality as HUBZone participants.

The current HUBZone Program, as designed by the chairman of the Small Business Committee, Senator BOND, is a good tool for getting contracting dollars into distressed geographic areas and neighborhoods. A HUBZone is an area that is (1) located in a qualified census tract, (2) a qualified ''non-metropolitan county'' that is not located in a metropolitan statistical area, and in which the median household income is less than 80 percent of the non-metropolitan state median household income, or an area that has an unemployment rate that is not less than 140 percent of the statewide average unemployment rate for the state in which the county is located, or (3) lands within the external boundaries of an Indian reservation. The current HUBZone program requires a small business to be located in one of these designated areas while also requiring at least 35 percent of the business' employees to live in a HUBZone. This helps get dollars circulating into areas of the community that have not enjoyed the economic growth of the last 10 years.

The Alaska Pilot Program contained in this bill will modify the requirements to allow a small business to qualify as a HUBZone participant if they meet only one of the following conditions: Either (1) they have their principle place of business in a HUBZone, or (2) at least 35 percent of their employees live in a HUBZone, or (3) at least 35 percent of the employees working on a qualified contract perform the work in a HUBZone. Rather than requiring a small business to meet all of the requirements for HUBZone contracts, this Alaska Pilot Program will allow small businesses in Alaska to compete for HUBZone contracts by fulfilling only one of the requirements. This should be beneficial for the communities and neighborhoods who have missed out on growth of the 1990's. In addition, it could mean more jobs for Alaskans and more money circulating into the Alaskan economy.

The bill also fixes technical problems that kept Alaska native-owned firms from being able to participate in the HUBZone program. This will allow Alaska native-owned small businesses an opportunity to broaden their business activities in the state while also contributing economically to their local communities and shareholders.

I would like to note that in providing benefits to native communities, this bill would not change Indian law, nor the State of Alaska's exclusive jurisdiction over lands in Alaska.

I thank the members of the Small Business and Indian Affairs Committees who worked on this issue and for their willingness to take into account the unique circumstances in Alaska. I believe this program will help Alaska's economy to move forwarded and will afford hard working small business owners in Alaska new opportunities.

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By Mr. FRIST (for himself, Mr. THOMPSON, and Mr. COCHRAN):

S. 2570. A bill to provide for the fair and equitable treatment of the Tennessee Valley Authority and its rate payers in the event of restricting of the electric utility industry.

LEGISLATION TO PROVIDE FOR FAIR TREATMENT OF THE TENNESSEE VALLEY AUTHORITY

• Mr. FRIST. Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 2570

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. DEFINITIONS.**

In this Act:

(1) COMMISSION.—The term ''Commission'' means the Federal Energy Regulatory Commission.

(2) DISTRIBUTOR.—The term ''distributor'' means a cooperative organization, municipal, or other publicly owned electric power system that, on December 31, 1997, purchased all or substantially all of its wholesale power requirements from the Tennessee Valley Authority under a long-term power sales agreement.

(3) DISTRIBUTOR SERVICE AREA.—The term ''distributor service area'' means a geographic area within which a distributor is authorized by State law to sell electric power to retail electric consumers on the date of enactment of this Act.

(4) ELECTRIC UTILITY.—The term ''electric utility'' has the meaning given the term in section 3 of the Federal Power Act (16 U.S.C. 796).

(5) EXCESS ELECTRIC POWER.—The term ''excess electric power'' means the amount of the electric power and capacity that—

(A) is available to the Tennessee Valley Authority; and

(B) exceeds the Tennessee Valley Authority's power supply obligations to distributors and any Tennessee Valley Authority retail electric consumers (or predecessors in interest) that had a contract for the purchase of electric power from the Tennessee Valley Authority on the date of enactment of this Act.

(6) PUBLIC UTILITY.—The term ''public utility'' has the meaning given the term in section 201 of the Federal Power Act (16 U.S.C. 824).

(7) RETAIL ELECTRIC CONSUMER.—The term ''retail electric consumer'' has the meaning given the term in section 3 of the Federal Power Act (16 U.S.C. 796).

(8) TENNESSEE VALLEY REGION.—The term ''Tennessee Valley Region'' means the geographic area in which the Tennessee Valley Authority or its distributors were the primary source of electric power on December 31, 1997.

**SEC. 2. WHOLESALE COMPETITION IN THE TENNESSEE VALLEY REGION.**

(a) AMENDMENTS TO THE FEDERAL POWER ACT.—

(1) WHEELING ORDERS.—Section 212(f) of the Federal Power Act (16 U.S.C. 824k(f)) is repealed.

(2) TRANSMISSION.—Section 212(j) of the Federal Power Act (16 U.S.C. 824k(j)) is repealed.

(b) AMENDMENTS TO THE TENNESSEE VALLEY AUTHORITY ACT.—

(1) SALE OR DELIVERY OF ELECTRIC POWER.—The third sentence of the first undesignated paragraph of section 15d(a) of the Tennessee Valley Authority Act of 1933 (16 U.S.C. 831n–4(a)) is repealed.

(2) ADDITIONAL AMENDMENTS.—The second and third undesignated paragraphs of section 15d(a) of the Tennessee Valley Authority Act of 1933 (16 U.S.C. 831n–4(a)) are repealed.

**SEC. 3. TENNESSEE VALLEY AUTHORITY POWER SALES.**

(a) LIMIT ON RETAIL SALES BY TENNESSEE VALLEY AUTHORITY.—Notwithstanding sections 10, 11, and 12 of the Tennessee Valley Authority Act (16 U.S.C. 831i, 831j, 831k), the Tennessee Valley Authority may sell electric power at retail only to—

(1) a retail electric consumer (or predecessor in interest) that had a contract for the purchase of electric power from the Tennessee Valley Authority on the date of enactment of this Act; or

(2) a retail electric consumer that consumes the electric power within a distributor service area, if the applicable regulatory authority (other than the Tennessee Valley Authority) permits any other power supplier to sell electric power to the retail electric consumer.

(b) CONSTRUCTION OF RETAIL ELECTRIC SERVICE FACILITIES.—No person shall construct or modify a facility in the service area of a distributor for the purpose of serving a retail electric consumer within the distributor service area without the consent of the distributor, except when the electric consumer is already being served by such a person.

(c) WHOLESALE POWER SALES.—

(1) EXISTING SALES.—Nothing in this title shall modify or alter the existing obligations of the Tennessee Valley Authority under the first sentence of section 10 of the Tennessee Valley Authority Act (16 U.S.C. 831i) to sell power to a distributor, provided that this paragraph shall not apply to access to power being supplied to another entity under an existing contract with a term of 1 year or longer by a distributor that—

(A) has made a prior election under section 5(b); and

(B) requests to increase its power purchases from the Tennessee Valley Authority.

(2) SALES OF EXCESS ELECTRIC POWER.—

(A) IN GENERAL.—Notwithstanding sections 10, 11, and 12, or any other provision of the Tennessee Valley Authority Act of 1933 (16 U.S.C. 831i, 831j, 831k), the sale of electric power at wholesale by the Tennessee Valley Authority for use outside the Tennessee Valley Region shall be limited to excess electric power.

(B) NO EXCESS ELECTRIC POWER.—The Tennessee Valley Authority shall not offer excess electric power under a firm power agreement with a term of 3 or more years to any new wholesale customer at rates, terms, and conditions more favorable than those offered to any distributor for comparable electric power, taking into account such factors as the amount of electric power sold, the firmness of such power, and the length of the contract term, unless the distributor or distributors that are purchasing electric power under equivalent firm power contracts agree to the sale to the new customer.

(C) NO EFFECT ON EXCHANGE POWER ARRANGEMENTS.—Nothing in this subsection precludes the Tennessee Valley Authority from making exchange power arrangements with other electric utilities when economically feasible.

(d) APPLICATION OF TENNESSEE VALLEY AUTHORITY ACT TO SALES OUTSIDE TENNESSEE VALLEY REGION.—The third proviso of section 10 of the Tennessee Valley Authority Act of 1933 (16 U.S.C. 831i) and the second and third provisos of section 12 of the Tennessee Valley Authority Act of 1933 (16 U.S.C. 831k) shall not apply to any sale of excess electric power by the Tennessee Valley Authority for use outside the Tennessee Valley Region.

**SEC. 4. TENNESSEE VALLEY AUTHORITY ELECTRIC GENERATION FACILITIES.**

Section 15d(a) of the Tennessee Valley Authority Act of 1933 (16 U.S.C. 831n–4(a)) is amended—

(1) in the second sentence, by inserting before the period at the end the following: '', if the Corporation determines that the construction, acquisition, enlargement, improvement, or replacement of any plant or facility used or to be used for the generation of electric power is necessary to supply the demands of distributors and retail electric consumers of the Corporation''; and

(2) by inserting after the second sentence the following: ''Commencing on the date of enactment of this sentence, the Tennessee Valley Authority shall provide to distributors and their duly authorized representatives, on a confidential basis, detailed information on its projections and plans regarding the potential acquisition of new electric generating facilities, and, not less than 45 days before a decision by the Tennessee Valley Authority to make such an acquisition, shall provide distributors an opportunity to comment on the acquisition. Notwithstanding any other provision of law, confidential information described in the preceding sentence shall not be disclosed by a distributor to a source other than the Tennessee Valley Authority, except (1) in response to process validly issued by any court or governmental agency having jurisdiction over the distributor; (2) to any officer, agent, employee, or duly authorized representative of a distributor who agrees to the same confidentiality and non-disclosure obligation applicable to distributor; (3) in any judicial or administrative proceeding initiated by distributor contesting action by the Tennessee Valley Authority to cause the construction of new electric generation facilities; or (4) on or after a date that is at least 3 years after the commercial operating date of the electric generating facilities.''.

**SEC. 5. RENEGOTIATION OF POWER CONTRACTS.**

(a) RENEGOTIATION.—The Tennessee Valley Authority and the distributors shall make good faith efforts to renegotiate their power contracts in effect on and after the date of enactment of this Act.

(b) DISTRIBUTOR CONTRACT TERMINATION OR REDUCTION RIGHT.—If a distributor and the Tennessee Valley Authority are unable by negotiation to arrive at a mutually acceptable replacement contract to govern their post-enactment relationship, the Tennessee Valley Authority shall allow the distributor to give notice 1 time each calendar year, within the 60-day period beginning on the date of enactment of this Act or on any anniversary of that date, of the distributor's decision to (1) terminate the contract to purchase wholesale electric energy from the Tennessee Valley Authority that was in effect on the date of enactment of this Act, to take effect on the date that is 3 years after the date on which notice is given under this subsection; or (2) reduce the quantity of wholesale power requirements under the contract to purchase wholesale electric energy from the Tennessee Valley Authority that was in effect on the date of enactment of this Act by up to 10 percent of its requirements, to take effect on the date that is 2 years after the date on which notice is given under this subsection, or more than 10 percent of its requirements, to take effect on the date that is 3 years after the date on which notice is given under this subsection, and to negotiate with the Tennessee Valley Authority to amend the contract that was in effect on the date of enactment to reflect a partial requirements relationship.

(c) PARTIAL REQUIREMENTS NOTICE.—As part of a notice under subsection (b), a distributor shall identify—

(1) the annual quantity of electric energy that the distributor will acquire from a source other than the Tennessee Valley Authority as the result of an election by the distributor; and

(2) the times of the day and year that specified amounts of the energy will be received by the distributor.

(d) NONDISCRIMINATION.—The Tennessee Valley Authority shall not unduly discriminate against any distributor as the result of—

(1) the exercise of notice under paragraph (1) or (2) of subsection (b) by the distributor; or

(2) the status of the distributor as a partial requirements customer.

**SEC. 6. REGULATION OF TENNESSEE VALLEY AUTHORITY TRANSMISSION SYSTEM.**

Notwithstanding sections 201(b)(1) and 201(f) of the Federal Power Act (16 U.S.C. 824(b)(1), 824(f)), sections 202(h), 205, 206, 208, 210 through 213, 301 through 304, 306, 307 (except the last sentence of 307(c)), 308, 309, 313, and 317 of that Act (16 U.S.C. 824a(h), 824d, 824e, 824g, 824i–824*l*, 825–825c, 825e, 825f, 825g, 825h, 825*l*, 825p) apply to the transmission and local distribution of electric power by the Tennessee Valley Authority to the same extent and in the same manner as the provisions apply to the transmission of electric power in interstate commerce by a public utility otherwise subject to the jurisdiction of the Commission under part II of that Act (16 U.S.C. 824 et seq.).

**SEC. 7. REGULATION OF TENNESSEE VALLEY AUTHORITY DISTRIBUTORS.**

(a) ELECTION TO REPEAL TENNESSEE VALLEY AUTHORITY REGULATION OF DISTRIBUTORS.—On the election of a distributor, the third proviso of section 10 of the Tennessee Valley Authority Act of 1933 (16 U.S.C. 831i) and the second and third provisos of section 12 of the Tennessee Valley Authority Act of 1933 (16 U.S.C. 831k) shall not apply to a wholesale sale of electric power by the Tennessee Valley Authority in the Tennessee Valley Region after the date of enactment of this Act, and the Tennessee Valley Authority shall not be authorized to regulate, by means of a rule, contract provision, resale rate schedule, contract termination right, or any other method, any rate, term, or condition that is—

(1) imposed on the resale of the electric power by the distributor; or

(2) for the use of a local distribution facility.

(b) AUTHORITY OF GOVERNING BODIES OF DISTRIBUTORS.—

(1) IN GENERAL.—Any regulatory authority exercised by the Tennessee Valley Authority over any distributor making an election under subsection (a) shall be exercised by the governing body of the distributor in accordance with the laws of the State in which the distributor is organized.

(2) NO ELECTION.—If a distributor does not make an election under subsection (a), the third proviso of section 10 of the Tennessee Valley Authority Act of 1933 (16 U.S.C. 831i) and the second and third provisos of section 12 of the Tennessee Valley Authority Act of 1933 (16 U.S.C. 831k) shall continue to apply for the duration of any wholesale power contract between the Tennessee Valley Authority and the distributor, in accordance with the terms of the contract.

(c) USE OF FUNDS.—In any contract between the Tennessee Valley Authority and a distributor for the purchase of at least 70 percent of the distributor's requirements for the sale of electric power, the Tennessee Valley Authority shall include such terms and conditions as may be reasonably necessary to ensure that the financial benefits of a distributor's electric system operations are allocated to the distributor's retail electric consumers.

(d) REMOVAL OF PURPA RATEMAKING AUTHORITY.—Section 3(17) of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2602(17)) is amended by striking '', and in the case of an electric utility with respect to which the Tennessee Valley Authority has ratemaking authority, such term means the Tennessee Valley Authority''.

**SEC. 8. STRANDED COST RECOVERY.**

(a) COMMISSION JURISDICTION.—

(1) RECOVERY OF COSTS.—

(A) IN GENERAL.—Subject to subparagraph (B), notwithstanding the absence of 1 or more provisions addressing wholesale stranded cost recovery in a power sales agreement between the Tennessee Valley Authority and a distributor that is executed after the date of enactment of this Act, the Tennessee Valley Authority may recover any wholesale stranded costs that may arise from the exercise of rights by a distributor under section 5, to the extent authorized by the Commission based on application of the rules and principles that the Commission applies to wholesale stranded cost recovery by other electric utilities within its jurisdiction.

(B) NO RECOVERY OF COSTS RELATED TO LOSS OF SALES REVENUES.—In any recovery under subparagraph (A), the Tennessee Valley Authority shall not be authorized to recover from any distributor any wholesale stranded costs related to loss of sales revenues by the Tennessee Valley Authority, or its expectation of continuing to sell electric energy, for any period after September 30, 2007.

(2) NO EFFECT ON CLAIM.—The exercise of rights by a distributor under section 5 shall not affect any claim by the Tennessee Valley Authority that the Tennessee Valley Authority may have for the recovery of stranded costs before October 1, 2007.

(b) DEBT.—

(1) IN GENERAL.—Stranded costs recovered by the Tennessee Valley Authority under subsection (a) shall be used to pay down the debt of the Tennessee Valley Authority, to the extent determined by the Tennessee Valley Authority to be consistent with proper financial management.

(2) GENERATION CAPACITY.—The Tennessee Valley Authority shall not use any amount recovered under paragraph (1) to pay for additions to the generation capacity of the Tennessee Valley Authority.

(c) UNBUNDLING.—

(1) IN GENERAL.—Any stranded cost recovery charge to a customer authorized by the Commission to be assessed by the Tennessee Valley Authority shall be—

(A) unbundled from the otherwise applicable rates and charges to the customer; and

(B) separately stated on the bill of the customer.

(2) NO WHOLESALE STRANDED COST RECOVERY.—The Tennessee Valley Authority shall not recover wholesale stranded costs from any customer through any rate, charge, or mechanism.

(d) REPORT.—Beginning in fiscal year 2001, as part of the annual management report submitted by the Tennessee Valley Authority to Congress, the Tennessee Valley Authority shall include in the report—

(1) the status of the Tennessee Valley Authority's long-range financial plans and the progress toward its goal of competitively priced electric power (including a general discussion of the Tennessee Valley Authority's prospects on meeting the objectives of the Ten Year Business Outlook issued on July 22, 1997);

(2) any changes in assumptions since the previous report that may have a material effect on the Tennessee Valley Authority's long-range financial plans;

(3) the source of funds used for any generation and transmission capacity additions;

(4) the use or other disposition of amounts recovered by the Tennessee Valley Authority under the Tennessee Valley Authority Act of 1933 (16 U.S.C. 831 et seq.) and this Act;

(5) the amount by which the Tennessee Valley Authority's publicly held debt was reduced; and

(6) the projected amount by which the Tennessee Valley Authority's publicly held debt will be reduced.

**SEC. 9. APPLICATION OF ANTITRUST LAW**

(a) IN GENERAL.—

(1) DEFINITION OF ANTITRUST LAWS.—

(A) IN GENERAL.—Except as provided in subparagraph (B), in this section, the term ''antitrust laws'' has the meaning given the term in subsection (a) of the first section of the Clayton Act (15 U.S.C. 12(a)).

(B) INCLUSION.—In this section, the term ''antitrust laws'' includes section 5 of the Federal Trade Commission Act (15 U.S.C. 45), to the extent that section 5 applies to unfair methods of competition.

(2) APPLICABILITY OF ANTITRUST LAW.—Except as provided in subsection (b), the Tennessee Valley Authority shall be subject to the antitrust laws with respect to the operation of its electric power and transmission systems.

(b) DAMAGES.—No damages, interest on damages, costs, or attorneys' fees may be recovered under section 4, 4A, or 4C of the Clayton Act (15 U.S.C. 15, 15a, 15c) from the Tennessee Valley Authority.

(c) EFFECT ON OTHER RIGHTS.—Nothing in this Act diminishes or impairs any privilege, immunity, or exemption in effect on the day before the date of enactment of this Act that would have been accorded any person by virtue of the association of the person together in advocating a cause or point of view to—

(1) the Tennessee Valley Authority; or

(2) any other agency or branch of Federal, State or local government.

**SEC. 10. SAVINGS PROVISION.**

Nothing in this Act shall affect section 15d(b) of the Tennessee Valley Authority Act of 1933 (16 U.S.C. 831n–4(b)), providing that bonds issued by the Tennessee Valley Authority shall not be obligations of, nor shall payment of the principal thereof or interest thereon be guaranteed by, the United States.●

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By Mr. WYDEN:

S. 2571. A bill to provide for the liquidation or reliquidation of certain entries of athletic shoes; to the Committee on Finance.

DUTY DRAWBACK FOR ENVIRONMENTAL RECYCLING

Mr. WYDEN. Mr. President, I am introducing legislation today to help retain a unique environmental recycling program launched by Nike, a home-grown Oregon business, which involves recycling running shoes rather than dumping them in a landfill. The bill would resolve an issue on which the U.S. Customs Service has taken inherently conflicting positions: whether a duty drawback can be claimed on an item that has no commercial value and is no longer an item in United States commerce but which is recycled rather than destroyed. I believe recycling should be promoted and not punished, and that is what this legislation does.

Under existing U.S. Customs law, an importer is entitled to import duty drawback on products that are returned to the importer because they are defective. The point of this provision is to safeguard against an import duty being imposed on a product that does not end up in United States commerce. Customs law and regulation ensures that a product will not end up in U.S. commerce by requiring that the product be completely destroyed to the extent that the product has no commercial value, or that it be exported from the United States. In certain cases Customs has allowed duty drawback: for example, alcohol salvaged from destroyed beer and malt liquor which was sold as scrap rather than dumped as waste was accorded duty drawback.

Consistent with Customs' requirements, for a number of years Nike destroyed the shoes and placed them in a landfill. This amounted to thousands of tons of non-biodegradable shoes being dumped in landfills. Because shoes are not biodegradable, Nike developed a new, more environmentally-sustainable way to dispose of the defective shoes by chopping them into small pieces, called ''re-grind,'' and giving the regrind without charge or compensation to manufacturers of sport surfaces. The re-grind became part of playground, basketball and other surfaces that was used primarily for charitable purposes in poor urban centers around the country. The program, called the ''Re-Use A-Shoe,'' is one of the many initiatives Nike has undertaken to incorporate environmental sustainability into its operations.

The issue Customs has been grappling with is whether the re-grind is ''destroyed with no commercial value'' so as to qualify the destroyed shoes for duty drawback treatment. For several years Customs granted the re-grind shoes duty drawback, but a Customs audit team recently determined that the re-grind was not ''destroyed,'' as it had commercial value for court manufacturers and Customs recommended retroactive denial of Nike's drawback claims, totaling $11.6 million. Because Customs had already refunded the drawback, the audit team recommended that Nike repay the $11.6 million to Customs.

It is clear from Customs' decisions that an article is considered destroyed when it has been rendered of no commercial value and is no longer an article of commerce. In this case, the defective footwear, once shred, is valueless and of no commercial interest to anyone. Even when the shredded material is subsequently processed by Nike to recover some material of limited use, the recovered material is not saleable to anyone and therefore has no commercial value.

Mr. President, it seems to me that the position taken by the Customs audit team is not consistent with the intent of the duty drawback provision. There is no commercial value to Nike in the re-grind; the shoes have been destroyed. Nike gives the product to the manufacturer without charge or compensation, and the manufacturers have confirmed they would not pay for the material. I have copies of letters from each of the manufacturers attesting to the fact that they would not pay for the re-grind and that it is not commercially viable. It appears that the Customs audit team believes a more desirable outcome is to have Nike dump some 2 million pairs or 3.5 million pounds of shoes into a landfill rather than recycle the destroyed material. The outcome is the same: the shoes no longer have commercial value, nor are they a product in U.S. commerce. It would seem to me there is no public policy benefit in forcing Nike to dump the shoes in a landfill; but that there is much to be gained from recycling millions of pairs of shoes that would otherwise be dumped in a landfill.

The legislation I am introducing today resolves the question in favor of recycling, in favor of the environment and in favor of a rational duty drawback policy. I ask unanimous consent that a copy of the legislation be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 2571

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. LIQUIDATION OR RELIQUIDATION OF CERTAIN ENTRIES.**

(a) IN GENERAL.—Notwithstanding section 514 of the Tariff Act of 1930 (19 U.S.C. 1514) or any other provision of law, the United States Customs Service shall, not later than 90 days after the date of the enactment of this Act, liquidate or reliquidate each drawback claim as filed described in subsection (b).

(b) DRAWBACK CLAIMS.—The drawback claims referred to in subsection (a) are the following claims, filed between August 1, 1993 and June 1, 1998:

Drawback Claims

221–0590991–9
221–0890500–5 through 221–0890675–5
221–0890677–1 through 221–0891427–0
221–0891430–4 through 221–0891537–6
221–0891539–2 through 221–0891554–1
221–0891556–6 through 221–0891557–4
221–0891559–0
221–0891561–6 through 221–0891565–7
221–0891567–3 through 221–0891578–0
221–0891582–0
221–0891584–8 through 221–0891587–1
221–0891589–7
221–0891592–1 through 221–0891597–0
221–0891604–4 through 221–0891605–1
221–0891607–7 through 221–0891609–3

(c) PAYMENT OF AMOUNTS DUE.—Any amounts due pursuant to the liquidation or reliquidation of the claims described in subsection (b) shall be paid not later than 90 days after the date of such liquidation or reliquidation.

## ADDITIONAL COSPONSORS

S. 63

At the request of Mr. KOHL, the name of the Senator from Georgia (Mr. CLELAND) was added as a cosponsor of S. 63, a bill to amend the Internal Revenue Code of 1986 to provide a credit against tax for employers who provide child care assistance for dependents of their employees, and for other purposes.

S. 85

At the request of Mr. BUNNING, the name of the Senator from Utah (Mr. HATCH) was added as a cosponsor of S. 85, a bill to amend the Internal Revenue Code of 1986 to reduce the tax on vaccines to 25 cents per dose.

S. 662

At the request of Mr. L. CHAFEE, the name of the Senator from Colorado (Mr. ALLARD) was added as a cosponsor of S. 662, a bill to amend title XIX of the Social Security Act to provide medical assistance for certain women screened and found to have breast or cervical cancer under a federally funded screening program.

S. 1007

At the request of Mr. JEFFORDS, the name of the Senator from New Hampshire (Mr. SMITH) was added as a cosponsor of S. 1007, a bill to assist in the conservation of great apes by supporting and providing financial resources for the conservation programs